

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

LORI JOHNSON

PLAINTIFF

VS.

CIVIL NO. 1:96CV57-JAD

PEOPLES BANK & TRUST CO.

DEFENDANT

MEMORANDUM OPINION

The court is examining plaintiff's claim that her employer, defendant Peoples Bank & Trust Co., violated the Equal Pay Act when it gave her pay unequal to and less than that of a male loan officer who previously held a similar position. Defendant's motion for summary judgment contends that the disparity in pay was based on a factor other than sex. 29 U.S.C. § 206(d)(1) states in pertinent part that:

[t]he Equal Pay Act prohibits an employer from wage discrimination within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to ... (iv) a differential based on any other factor other than sex: ...

Lori Johnson was hired by defendant bank in September 1992 as a teller. She entered the management trainee program in March 1994 with a salary of \$18,500. When in the fall of 1994 Johnson was

assigned to train with Marty Ducote, Corinth branch manager, in lending, she was earning \$19,150 and was completing her final months in the trainee program. In February 1995, while still a management trainee, Johnson was given the title of loan officer. On June 15, 1995, plaintiff learned from Aaron Spain, a loan officer who left the employment of the bank earlier that month, that he was paid \$21,000 in the same position. She immediately complained to her supervisor and was assured that Ducote in her annual evaluation praised her work and recommended she be made a bank officer and receive a salary increase upon her anniversary date, September 1. Dissatisfied with his response, Johnson began to seek other employment and resigned on August 21, 1995, to take a position with Patrick Home Center as a sales person for mobile homes. Although she later considered returning to the defendant bank and had some conversations along that line, she did not. She is now owner of a flower shop in Burnsville.

The affidavit evidence presented by the parties was that Spain, a successful mortgage loan originator for the bank, was offered a position with a rival bank as a management trainee in January 1995. Ducote offered Spain a position as a loan officer at a salary of \$21,000 to remain with Peoples Bank. According to Ducote, this was not a raise but a lateral transfer. This salary figure was arrived at by taking Spain's base salary, \$18,000, plus a projection of Spain's 1995 commissions based upon his past

performance as a mortgage loan originator. Spain ultimately resigned in June 1995 for personal reasons.

Ducote testified that loan officers were paid according to their education, prior training, years in the job, performance on the job and level of responsibility. Johnson had no prior banking experience when she was hired as a teller right out of undergraduate school at Ole Miss where she received a bachelor's degree in managerial finance. Upon her hire, she was assured that she would be given the opportunity to advance. Within two years she moved from teller to lending assistant and into the management trainee program. She had lending authority of \$10,000 for secured loans and \$1000 for unsecured loans.

Johnson offers the following evidence to rebut the defendant's testimony that the salary disparity between Spain and herself was based on factors other than sex: (1) a statement by Spain that he figured his income as a mortgage loan originator differently (see footnote 1), that he had heard Ducote declare that women should not be loan officers (no time frame or context specified) and that Ducote informed Spain he should not discuss his salary with other employees; and (2) personnel information on five male loan officers in the northeast Mississippi area.

Spain's affidavit. No one disputes that Spain was given the position of loan officer in order to keep him on as an employee. Ducote says this new position involved no increase in pay; Spain

states that he was given a \$1000 raise to remain with the bank. Spain calculates his income, base pay plus commissions, entirely differently from Ducote. He figures that his income in 1994 was \$20,000, \$18,000 base pay plus \$200 per month commission.¹ Ducote, on the other hand, states that in 1995 commissions were based on number of loans made rather than on the total value of the loans as they were figured in 1994, which would have caused Spain to earn \$21,000 in 1995 had he continued to produce at the same rate. Assuming that this did constitute a raise, it is clear that this "raise" was given in order to keep Spain from leaving the bank. A pay differential given to prevent an employee from leaving the company is a "differential based on any other factor than sex." *Sigmon v. Parker Chapin*, 901 F. Supp. 667, 679 (S.D.N.Y. 1995).

As for Spain's allegations that Ducote had expressed an anti-female opinion, there is no time frame or context given for that opinion. Even if that was his true personal opinion, it is clear that in practicing his profession he did not act upon that opinion. Johnson herself testified that Ducote gave her the understanding that she would have the opportunity to advance, then offered her that opportunity to move into a management position when it came open. He gave Johnson excellent reviews and told her he had recommended she be given a position as an officer of the bank as assistant cashier.

¹This annual figure, correctly stated, should be \$20,400.

In opposition to the motion for summary judgment, plaintiff has offered personnel information on five men in loan officer positions in the Tupelo and Booneville offices of Peoples Bank. All received higher pay than did plaintiff. Defendant contends that these employees were not "within any establishment in which [Johnson was] employed." Because of the fluidity with which bank employees were moved in and out of various branches, the argument appears to be invalid.

Jason Beasley holds an undergraduate degree in banking and finance. Beasley joined the management training program at the same salary as did Johnson, and they received identical pay raises in the program. However, when he was given the position of Compliance Officer in May 1994, he was raised to \$20,250. By the time he was made a loan officer, he was earning \$21,375, and had lending authority of \$15,000 for secured loans, \$1000 for unsecured loans. In that period of time he had received training and acquired skills and experience peculiar to the position of Compliance Officer which Johnson did not have.

Mark Jobe earned both Bachelors and Masters Degrees in Accounting. From the documentation presented to the court, Jobe was never a loan officer, but was a management trainee in Human Resources. Like Johnson, he began his program at \$18,500, but received increases to \$20,149 by July 1995. He never held the position of loan officer.

Graham Thompson was hired as a management trainee at \$18,500 in February 1993. He left the program to become a staff loan reviewer at a salary of \$19,700. By the time he became a loan officer in February 1995, he had already received merit pay increases to \$22,850 and assumed the new duties without a pay increase. He received a pay increase in November 1995 when he was transferred to the Tupelo branch, where his lending authority was established at \$15,000 for secured loans and \$3,000 for unsecured loans.

Stacy Spearman received a degree in Banking and Finance from the University of Mississippi in May 1994. He was hired as a utility clerk, but within a few months was promoted to the position of Customer Service Representative with lending responsibilities at a Kroger facility with a salary of \$15,000. He was made the loan officer at the South Gloster Branch in Tupelo in June 1995, and received a salary increase to \$19,800 because of his prior loan experience. His lending authority was \$15,000 for secured loans and \$1000 for unsecured loans.

Bryan McCutchen, who has an undergraduate general business degree from Mississippi State University, was hired as a Customer Service Representative with lending responsibilities at the Kroger branch in January 1992. His salary of \$15,000 was raised to \$17,000 when he was transferred in August 1993 to Booneville where he was a lending assistant and was eventually

assigned a loan officer position. He received regular promotions and merit increases in the next two years and was earning \$21,000 in August 1995 when plaintiff resigned. His lending authority was established at \$25,000 for secured loans and \$5000 for unsecured loans.

In reviewing the background, the responsibilities and the experience of the various loan officers, it cannot be said that the pay differential of any one of them was based upon sex. Therefore, the Equal Pay Act claim must fail and summary judgment on the issue of plaintiff's EPA claim will be granted in favor of the defendant.

A separate judgment will be issued in accordance with this opinion.

THIS _____ day of March, 1997.

UNITED STATES MAGISTRATE JUDGE